

Supreme Court, U. S.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No. 78-598

LOUISVILLE & NASHVILLE RAILROAD
COMPANY and STEVE HAVARD,

Petitioner,

versus

RHEETA HASTY, A Minor, By and Through Her Mother and Next
Friend, MRS. FAYE HASTY,
Respondent.

REPLY BRIEF TO
PETITION FOR A WRIT OF CERTIORARI

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JURISDICTION

Petitioners contend that this Court has jurisdiction to hear this matter based upon 28 USCA §1257(3). With this contention Respondent cannot agree. Title 28 USCA §1257(3) states:

[f]inal judgments or decrees rendered by the highest court of a state in which a decision

could be had, may be reviewed by the Supreme Court as follows: (3) By Writ of Certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a state statute is drawn in question on the grounds of it being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under, the United States. [Emp. ours].

Respondent would show that the Petitioners failed to properly raise issues which would comply with this provision in order to establish jurisdiction. In addition, Title 28 USCA Supreme Court Rule 19 provides:

1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
 - (a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

Respondent contends that these provisions governing jurisdiction on Writ of Certiorari have not been met in the case presently before the Court. It becomes obvious when reviewing the Petition for Writ of Certiorari and its failure to comply with 28 USCA Supreme Court Rule 23(f), which requires:

If review of the judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e.g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e.g., ruling on exception, portion of the court's charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on writ of certiorari.

Respondent would urge upon the Court that the orders which Petitioners seek to have reviewed have not been adjudicated by the highest court of the State

of Mississippi in such a manner as to properly raise these issues on Petition for Certiorari. This contention is based upon the fact that a timely raising of the constitutional issues must be made in order for the United States Supreme Court to consider the granting of a petition for certiorari. In *Hulbert v. City of Chicago*, 202 U.S. 275, 26 S. Ct. 617 (1906) the Court said that there must be a clear showing of the raising of a federal question which was decided upon by the state court before the United States Supreme Court would consider reviewing the issue. In that particular case the petitioner attempted to raise the constitutionality of an ordinance which provided for an assessment for a public improvement. Among the basis of appellant's objections were the following:

"Said act concerning local improvements, passed June 14, 1897, and all amendments thereto, are not only contrary to the Constitution of Illinois, but they are also contrary to the Constitution of the United States and to the Fourteenth Amendment thereof.

"Said act concerning local improvements, said ordinance, which is the basis of the present proceedings, and all documents and orders relating thereto are contrary to the Constitution of the United States and to the Fourteenth Amendment thereof, because such act, ordinance, document, and orders seek to deprive objector of property without due process of law.

"Said ordinance and proceedings are in other respects illegal, unconstitutional, and void.

"The proceedings herein and said act are contrary to the Constitution of the United States, and to the Fourteenth Amendment thereof, because the Petitioner herein, under and by virtue of said act and of said proceedings, seeks to deprive these objectors of their property without due process of law. Said proceedings and said act are also contrary to the Constitution of the United States, and to the Fourteenth Amendment thereof, for the reasons set forth in the several foregoing objections."

26 S. Ct. 617, 618.

It is submitted that the petitioners in this case failed to follow through on any constitutional objections and failed to raise same in such a specific way as was raised in the case of *Hulbert v. Chicago*, 202 U.S. 275, (See 1a-3a, 7a-9a, 17a-19a). In *Hulbert v. Chicago*, 202 U.S. 275, 26 S. Ct. 617, 618, the Court stated:

The Bill of Exceptions shows that plaintiff in error did not bring to the attention of the trial court that the act of the state under which the assessment was made, or any of the proceedings were contrary to the Fourteenth Amendment to the Constitution of the United States, nor did he assign as error on appeal to the Supreme Court that the rulings of the trial court or its judgments infringed that

amendment. *Hulbert v. Chicago*, 202 U.S. 275, 26 S. Ct. 617, 618.

Petitioners in this case only attempted to raise an issue in reference to denial of jury trial in violation of Amendment VII of the Constitution of the United States and in violation of Amendments V and XIV of the Constitution of the United States (7a-9a). This motion which was filed the same day as Petitioners entered a general appearance in this cause by filing their answer was not ruled upon until subsequent to the filing of said answer to Bill of Attachment. In Petitioners' Motion for Rehearing, or a New Trial, again, the only constitutional issue raised had to do with the alleged right of a jury trial and, again, there was no mention of a violation of the Due Process or Equal Protection Clauses, nor an opportunity for the trial court to rule thereon. (17a-20a).

Petitioners now seek in the United States Supreme Court by their Petition for Writ of Certiorari to put the Chancery Court of Jackson County, Mississippi in error on issues upon which it was never given a reasonable opportunity to rule. They also attempt to put the Supreme Court of the State of Mississippi in error in reference to its "Due Process" argument, which was not raised in its Brief.

It has always been held that in order for the United States Supreme Court to consider a Constitutional issue, that said issue must have been necessary for the

decision reached from the highest state court below. See *Simmons v. West Haven Housing Authority*, 399 U.S. 510, 26 L. Ed. 2d 764, 90 S. Ct. 1960, reh den 400 U.S. 856, 27 L. Ed. 2d 94, 91 S. Ct. 23 (1970), and *Ellis v. Dixon*, 349 U.S. 458, 99 L. Ed. 1231, 75 S. Ct. 850 (1954). This principle has been variously stated, however, it should be noted that wherein the decision of the state's highest appellate court may rest on a non-federal ground that this Court has repeatedly declined to proceed upon.

It has also been held even in criminal cases in reference to appeals coming before the court that the issue as to sufficiency and propriety in raising a federal question is left to the sound discretion of the United States Supreme Court and that it would be presumed that when the highest state court failed to pass upon a federal question that the omission was due to want of proper presentation of the issue to the state courts, and that the burden was upon the petitioner to show otherwise. *Street v. New York*, 394 U.S. 576, 22 L. Ed. 2d 572, 89 S. Ct. 1354 (1969).

This Court has also held that it will decline to review state court judgments which rest on independent or adequate state substantive or procedural grounds, even where those judgments also cited federal questions. *Henry v. State of Mississippi*, 379 U.S. 443, 13 L. Ed. 2d 408, 85 S. Ct. 564, reh den 380 U.S. 926, 13 L. Ed. 2d 813, 85 S. Ct. 878 (1965).

In the case at bar, it is submitted that the Motion to Dismiss filed in Chancery Court analogous with the date of the filing of an answer entering a general appearance was a procedure not recognized under Mississippi Chancery practice and that, therefore, the Constitutional issues of Due Process and Equal Protection were not properly raised. It is alternatively submitted that the Petitioners herein waived any Constitutional defects by proceeding to make their general appearance in the Chancery Court of Jackson County, Mississippi, without having a ruling on their Motion to Dismiss.

In the case of *Raley v. Ohio*, 360 U.S. 423, 3 L. Ed. 1344, 79 S. Ct. 1257 (1959), this court recognized in determining a jurisdictional question based upon its appellate jurisdiction that there must be "an explicit and timely insistence in the state courts that a state statute, AS APPLIED, is repugnant to the Federal Constitution, treaties, or laws" [Emph. ours], and "that the highest court of the state shall have passed on the federal Constitutional questions".

It is respectfully urged that the issues attempted to be raised before the United States Supreme Court by Petitioners herein were not previously raised as required.

SUPPLEMENTAL STATEMENT OF THE CASE

Petitioner, Louisville & Nashville Railroad Company, owns more than 29 miles of track in Jackson

County, Mississippi. The Petitioner, Louisville & Nashville Railroad Company, owns other real property other than that within its right of way and owns numerous items of personal property in Jackson County, Mississippi. The amount of property is valued in excess of the amount sued for in the original Complaint in this cause. Louisville & Nashville Railroad Company is a foreign corporation which has qualified to do business in the State of Mississippi with a local agent in charge of the Pascagoula, Jackson County, Mississippi, depot.

The accident for which this case was filed arose in Harrison County, which adjoins Jackson County, Mississippi. The Louisville & Nashville Railroad Company track which was attached herein crosses three counties in the southern part of Mississippi. The accident complained of occurred upon this same line of track.

Service was had upon the Petitioner, Louisville & Nashville Railroad Company, by personal service upon its local depot agent, W. J. McRaney. The record clearly shows that no assets of the Louisville & Nashville Railroad Company were ever confiscated by the Sheriff or other judicial official, and that no cash on hand or personal property was ever interfered with in any way in this cause. In addition, no property was taken, nor was Louisville & Nashville Railroad Company's free use thereof affected in any way. Louisville & Nashville Railroad Company continued to operate just as they had before the filing of this lawsuit.

Petitioners also contend in their Statement of Facts that they complained of denials of Equal Protection and Due Process by filing a motion in the Chancery Court of Jackson County, Mississippi, attacking the jurisdiction. Petitioners initially did not raise any violation of the United States Constitution in reference to the Due Process or Equal Protection Clauses, but objected to the jurisdiction of the court by virtue of a Motion to Quash Process and Attempted Attachment and to Dismiss Bill for Want of Jurisdiction (1a-5a) based upon the following allegations:

That the Defendant, Louisville & Nashville Railroad Company, owns and maintains property in Jackson County, Mississippi, valued in excess of the amount sued for in the Bill of Complaint.

That the Defendant is qualified to do business in the State of Mississippi and has a registered agent for service of process in the state, as well as a local agent in charge of the Pascagoula, Mississippi office, either of whom may receive process which would lead to a valid *in personam* judgment against the Defendant if a judgment were obtained.

The Petitioners further pleaded that they were being denied the right of a jury trial but initially raised no Constitutional argument in reference thereto.

Subsequently, the Petitioners filed a Motion to Dismiss (7a-9a) — a procedure not recognized under the State Practice in Mississippi in either Chancery or Circuit Courts. In this motion they attempted to raise the denial of the right of trial by jury in violation of Amendment VII of the Constitution of the United States and in violation of Amendments V and XIV of the Constitution of the United States. In addition, they raised issues as to the violation of provisions of the Mississippi Constitution, which the Supreme Court of Mississippi decided adversely to the Petitioners herein.

On July 31, 1974, the same day that the alleged Motion to Dismiss was filed, Petitioners also filed an Answer to Bill of Attachment (10a-15a), which was a general appearance in the Chancery Court and thereby submitted themselves to the Chancery Court in *personam*. The Motion to Dismiss was not ruled on until August 6, 1974.

Petitioners also state that they raised the Due Process and Equal Protection arguments in their Motion for a New Trial (17a-20a). Again, the only Federal Constitutional issues which were raised were stated thusly:

That in denying the Defendant their right to be sued in the Circuit Court and in denying the jury trial, the Court was in error and violated the rights of these Defendants under Amendment VII of the Constitution of the

United States and Amendment V and Amendment XIV of the Constitution of the United States

Therefore, the issues of denial of Due Process and Equal Protection were not specifically raised at this point in time.

It was not until the Brief and Assignment of Errors were filed before the Mississippi Supreme Court that the Equal Protection argument was specifically raised. The "Due Process" argument was not even raised in the Brief filed in the Mississippi Supreme Court (see footnote 1, page 3a of the Appendix of the Petition for a Writ of Certiorari).

REASONS FOR DENYING THE WRIT

I.

Certiorari Should Be Denied Since The Statutes Do Not Violate Due Process On Their Face And As Applied Here And That The Decision Below Is Not Contrary To Applicable United States Supreme Court And Lower Federal Court Decisions.

Petitioners apparently place much reliance on the case of *Shaffer v. Heitner*, 433 U.S. 186, 97 S. Ct. 2569 (1977), which dismissed a suit arising under the Delaware Attachment Statute. The basis of that holding, however, was that the Defendant therein failed to have significant contact with the State of Delaware so as to be subject to *quasi in rem* jurisdiction in that state

based upon its failure to satisfy the "Minimum Contacts" principle enumerated in *International Shoe v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 98 L. Ed. 95 (1945).

In the case at bar the evidence is undisputed that the Louisville & Nashville Railroad Company owned land within Jackson County, Mississippi; operated a railroad through said county, as well as Harrison and Hancock counties in Mississippi; and had no less than 29 miles of track in Jackson County, Mississippi; and that the accident complained of in the subject suit occurred while operating a train on the same line of track which is in question and which was the subject of the attachment. No legitimate argument can be made that the Louisville & Nashville Railroad Company did not have "Minimum Contacts", as was the case in *Shaffer*, *supra*. Even under the most restrictive view of *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 98 L. Ed. 95 (1945), the Louisville & Nashville Railroad Company had subjected itself to the jurisdiction of the Chancery Court of Jackson County, Mississippi, and was doing a substantial amount of business in this jurisdiction. *Shaffer*, *supra*, did not hold Delaware's attachment statutes unconstitutional, *per se*, but in effect held that they were violative of the Due Process Clause of the United States Constitution as applied to the defendants, based upon their failure to have "minimum contacts" with the state. It is also apparent that the Petitioners did not bother to review the procedures authorized under Delaware law in ref-

erence to Attachment in Chancery. These statutes are very dissimilar to those applied under Mississippi's Attachment in Chancery.

In the case at bar there has been absolutely no showing that the Attachment in Chancery statute as applied in this case denied anyone of any substantial property right or caused any deprivation thereof so as to activate the Due Process Clause of the Constitution of the United States.

The property attached in this case constituted real estate which was located in Jackson County, Mississippi and which had been owned by the Louisville & Nashville Railroad Company for many years. None of the cases cited by Petitioners involve real property, but rather personality. The right to attach such property of non-residents has been recognized since *Pennoyer v. Neff*, 5 Otto 714, 95 U.S. 714, 24 L. Ed. 565, (1877). This remains the law today.

Two of the justices, Mr. Justice POWELL and Mr. Justice STEVENS, both of whom concurred in opinion in *Shaffer v. Heitner*, 433 U.S. 186, 97 S. Ct. 2569, 2587-2588, (1977), observed that real property probably should be handled in a different manner than personality. Mr. Justice POWELL stated:

I would explicitly reserve judgment, however, on whether the ownership of some forms of property whose situs is indisputably and per-

manently located within a State may, without more, provide the contacts necessary to subject a defendant to jurisdiction within the State to the extent of the value of the property. In the case of real property, in particular, preservation of the common law concept of *quasi in rem* jurisdiction arguably would avoid the uncertainty of the general *International Shoe* standard without significant cost to "traditional notions of fair play and substantial justice." [*International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158] . . . , quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S. Ct. 339, 343, 85 L. Ed. 278 (1940). 97 S. Ct. 2569, 2587.

Mr. Justice STEVENS, while concurring in the result in *Shaffer*, *supra*, said:

I agree with Mr. Justice POWELL that it should not be read to invalidate *in rem* jurisdiction where real estate is involved. 97 S. Ct. 2588.

Petitioners also rely upon the cases of *Fuentes v. Shevin*, 407 U.S. 67, 92 S. Ct. 1983 (1972), and *Sniadich v. Family Finance Corp.*, 395 U.S. 337, 89 S. Ct. 1820 (1969), as upholding their position that they were denied procedural due process. In order to properly evaluate these cases in view of the case at bar, it is necessary to look specifically at the facts of each case in reference to

its application to the Due Process Clause of the Fourteenth Amendment. In the *Fuentes* case, *supra*, the Plaintiffs were attempting to repossess property from Defendants; therefore, there can be no question that they were being deprived of personal property. This is not the situation of the case at bar. As pointed out previously, there was no substantial interference with the property of the Defendant, Louisville & Nashville Railroad Company, either personal or real.

In *Sniadich v. Family Finance Corp.*, 395 U.S. 337, 89 S. Ct. 1820 (1969), the petitioner had actually had her salary garnished and her wages frozen. Again, there was a substantial interference with a valid property right. The Court in that case stated

A procedural rule that may satisfy due process for attachments in general, see *McKay v. McInnes*, 279 U.S. 820, 49 S. Ct. 344, 73 L. Ed. 975, does not necessarily satisfy procedural due process in every case. The fact that a procedure would pass muster under a feudal regime does not mean it gives necessary protection to all property in its modern forms. We deal here with wages — a specialized type of property presenting distinct problems in our economic system. We turn then to the nature of that property and problems of procedural due process.

A prejudgment garnishment of the Wisconsin type is a taking which may impose tremen-

dous hardship on wage earners with families to support. 89 S. Ct. 1822.

The Court went on to say:

The result is that a prejudgment garnishment of the Wisconsin type may as a practical matter drive a wage-earning family to the wall. Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing . . . this prejudgment garnishment procedure violates the fundamental principles of due process. 89 S. Ct. 1822, 1823 (1969).

Again, it should be pointed out that there has been no substantial deprivation of any property rights of the Petitioners in the case before the bar.

Petitioners also urge upon the Court the case *Mississippi Chemical Corporation v. Chemical Construction Corporation*, 444 F. Supp. 925 (1977), as holding Mississippi's Chancery Court Attachment Procedures as being violative of procedural due process. It should be pointed out, however, that the holding of that case was also limited to the facts before that court. 444 F. Supp. 925, 943-944.

In *Mississippi Chemical Corporation v. Chemical Construction Corporation*, *supra*, the funds attached were not at-

tributal to contracts to be performed in the State of Mississippi or to debts arising in this state; contrarily, all involved activity outside of the jurisdiction of the State of Mississippi. In addition, huge sums of money owing under the provisions of those contracts were tied up, and this constituted significant deprivation of a property right without question — a condition, again, not applicable to the case at bar.

It is, therefore, respectfully urged that not only do the Petitioners fail to properly raise any Constitutional issues in reference to the Due Process Clause of the United States Constitution, but that it has wholly failed to show that there has been a deprivation of any rights as the allegedly "unconstitutional" statutes are applied to it. It is, therefore, respectfully urged that this Honorable Court should decline to grant Certiorari based upon an alleged denial of due process

II.

Certiorari Should Be Denied Because The Statutes As Applied Do Not Deny Equal Protection Of The Laws To Petitioners.

Respondent, without re-enumerating the jurisdictional deficiencies of the Petition for a Writ of Certiorari, again would incorporate its previous authority in response to whether Certiorari should be granted to consider whether or not Mississippi's Attachment in Chancery as applied to the Petitioners constituted a denial of equal protection of the laws.

In construing the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, this Court has traditionally held that the rational basis standard of equal protection analysis is a relatively relaxed standard reflecting the Court's awareness that the drawing of lines that create a distinction is peculiarly a legislative test and an unavoidable one, and that under such standards perfection is not necessary and such classifications are presumed valid. *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 96 S. Ct. 2562, 49 L. Ed.2d 520 (1976). The only exception to this rule is when a suspect category, such as Civil is involved and then a higher standard is required in order to uphold statutes which create a distinction in classifications. It is, therefore, respectfully urged that if there is a reasonable basis to distinguish the Attachment in Chancery statute as applied to Louisville & Nashville Railroad Company, that such a statute should not be overthrown on the basis of violating the Equal Protection Clause of the United States Constitution. Section 11-31-1, Mississippi Code of 1972, Annotated (17a of Petitioners' Brief) applies an Attachment in Chancery jurisdiction to "any non-resident, absent or absconding debtor who has lands and tenements within this state . . .".

Therefore, the question is whether a non-resident domesticated corporation should be treated differently from a corporation organized and existing under the laws of the State of Mississippi. It should be noted that §11-31-1, Mississippi Code of 1972, Annotated,

provides this remedy against any non-resident, absent or absconding debtor; these three categories were obviously designated because the legislature was of the opinion that the citizens of the State of Mississippi should be given additional protection against these particular classes for the reason that they had less substantial contacts within the state or were attempting to avoid the jurisdiction of the courts of this state to settle a dispute.

There can be no question that the non-resident provision or class would be applied with equality toward a corporation and toward an individual. Of course, this statute would be subject to there being sufficient minimal contacts as recognized in *Shaffer v. Heitner*, 433 U.S. 186, 97 S. Ct. 2569 (1977). Therefore, the sole question is whether or not the legislature of the State of Mississippi, in order to protect its citizens, may provide a remedy to be exercised against non-residents which is different from the remedy which would be exercised against resident citizens without offending the Equal Protection Clause of the United States Constitution. In other words, is there a rational basis to distinguish non-resident domesticated corporations (such as your Petitioners herein) and domestic corporations?

In *Southern Motor Express Co. v. Magee Truck Lines, Inc.*, 177 So. 653 (1937), the appellant attempted to argue that a non-resident domesticated corporation should be treated identically with a domestic corporation for

purposes of the attachment statute. The Court, rejecting that argument, observed:

Whatever may be the full import of the domestication statutes, we think it may be safely said that they do not operate to make two separate and distinct corporations. The foreign corporation domesticated here still remains one corporation, and it must, therefore, have its domiciliary residence in one state and not in both. Thus, it seems the more reasonable to ascribe that residence to the original state which above others has *visitorial and supervisory powers over it as well as the final authority to dissolve it*. [Emph. ours].

The Court went on to observe that:

Under the ruling of the Supreme Court of the United States in *Southern Ry. Co. v. Allison*, 190 U.S. 326, 23 S. Ct. 713, 47 L. Ed. 1078, that a domesticated foreign corporation may remove to the federal court an action brought in the state of the domestication on the ground that it is a resident of the state of its original incorporation. 177 So. 653 (1937).

In *Southern Motor Express Co.*, *supra*, the Court went on to hold that to allow a domesticated corporation to claim, it should be treated identically with a domestic corporation would permit a removal by the domesticated cor-

poration in a suit brought in excess of the jurisdictional amount for diversity and would allow, on the other hand, a suit brought for a lesser amount to be dismissed on the basis that the attachment of a resident would not lie. Therefore, the issue is whether or not the visitorial, supervisory, and the final authority to dissolve a corporation can constitute a reasonable basis of distinction so as to not breach the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

It is respectfully submitted that such a distinction is not only permissible but has a valid basis in the case presently before the Court, in that the purpose of the Attachment in Chancery Statutes in Mississippi was to give citizens of this state additional protection from non-resident corporations where the State of Mississippi has no visitorial and supervisory powers over it. It is respectfully urged that such a distinction has a rational basis and, therefore, does not infringe on the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

III.

Certiorari Should Be Denied Because There Is No Constitutional Right To A Jury Trial In A Civil Suit In A State Court In Mississippi In Instances Such As This, Nor Under The Seventh Amendment Of The United States Constitution.

The Supreme Court of Mississippi in its opinion in this case, *Louisville & Nashville Railroad Co., et al v. Rhea Hasty*, 360 So. 2d 925 (1978), adequately stated the prevailing state law in that regard. The Court stated:

Appellant next contends that its constitutional right to a jury trial was violated by the Chancery Court in taking jurisdiction of this case. However, this issue has previously been decided adversely to Appellant and the appellant has not advanced any arguments which would persuade us to overrule those cases. See *Illinois Central Railroad Co. v. McDaniel*, 246 Miss. 600, 151 So. 2d 805 (1963); *Matthews v. Thompson*, 231 Miss. 258, 95 So. 2d 438 (1957); *Talbot & Higgins Lumber Company v. McLeod Lumber Co.*, 147 Miss. 186, 113 So. 433 (1927).

Petitioners' further contention that the taking of jurisdiction by the Chancery Court of Jackson County, Mississippi, denied it due process is also contrary to the prior holdings of this Court which do not apply the Seventh Amendment of the Constitution to state court proceedings. In the case *Olesen v. Trust Company of Chicago*, 245 F. 2d 522 (7th Cir. 1957), the Court sustained a Motion to Dismiss based on the fact that there was no federal question when appellant attempted to raise constitutional grounds that she had been denied a right to a jury trial as guaranteed under the Seventh Amendment of the United States Constitution. The Court held:

It is clear there is no federal question involved in the case at bar. The Seventh Amendment of the United States Constitution applies to trials in the United States courts. Citing *Bute v. People of State of Illinois*, 333 U.S. 640, 657 (footnote), 68 S. Ct. 763, 92 L. Ed. 986.

Trial by jury in civil actions in state courts may be modified by a state or abolished altogether. *Walker v. Sauvinet*, 92 U.S. 90, 23 L. Ed. 678; *Maxwell v. Dow*, 176 U.S. 581, 20 S. Ct. 494, 44 L. Ed. 597; *New York Central Railroad Company v. White*, 243 U.S. 188, 208, 37 S. Ct. 247, 61 L. Ed. 667; *Wagner Electric Manufacturing Company v. Lyndon*, 262 U.S. 226, 232, 43 S. Ct. 589, 67 L. Ed. 961.

A denial of trial by jury in a state court is not a denial of due process of law under the Fourteenth Amendment. "The Fourteenth Amendment neither implies that all trials must be by jury, nor guarantees any particular form or method of state procedure." *Hardware Dealers' Mutual Fire Insurance Company of Wisconsin v. Glidden Co.*, 284 U.S. 151, 158, 52 S. Ct. 69, 71, 76 L. Ed. 214.

Olesen v. Trust Company of Chicago, 245 F. 2d 522 (7th Cir. 1957).

It is also likewise contrary to Petitioners' contention that the denial of a jury trial violated the Equal Protection Clause since it is clear that others similarly situated to which the Attachment in Chancery Statute

would be applicable could likewise be denied trial by jury in the state proceedings.

CONCLUSION

Respondent, therefore, respectfully contends that the Petitioners herein have wholly failed to raise constitutional questions in reference to denial of due process and equal protection under the facts in this case and, further, have wholly failed to substantiate their claim that this petition requesting certiorari should be granted since there has been no denial of their rights or equal protection and due process as the Attachment statute has been applied. It is, therefore, respectfully submitted that this petition should be denied.

Respectfully submitted,

JOHN L. HUNTER
Attorney for RHEETA HASTY, a Minor, by and Through her Mother and Next Friend, MRS. FAYE HASTY, RESPONDENT

CUMBEST AND CUMBEST, P.A.
Attorneys for Respondent
Post Office Drawer 1287
Pascagoula, Mississippi 39567
Telephone: (601) 762-5422

CERTIFICATE OF SERVICE

I, JOHN L. HUNTER, attorney of record for the Respondent, Rheetta Hasty, a Minor, by and through her Mother and Next Friend, Mrs. Faye Hasty, do hereby certify that I have mailed this day, by United States mail, postage prepaid, three (3) true and correct copies of the foregoing printed Reply Brief to Petition for A Writ of Certiorari to the Supreme Court of Mississippi to Honorable Raymond L. Brown, attorney of record for Petitioners, addressed to his usual business mailing address of: Megehee, Brown & Williams, P.A., Post Office Box 787, Pascagoula, Mississippi 39567.

THIS, the ____ day of November, 1978.

JOHN L. HUNTER

APPENDIX

IN THE CHANCERY COURT
STATE OF MISSISSIPPI
COUNTY OF JACKSON

NO. 26,697

RHEETA HASTY, a Minor, By and Through Her
Mother and Next Friend, Mrs. Faye Hasty,
Complainant,

versus

LOUISVILLE & NASHVILLE RAILROAD COMPANY, a Kentucky Corporation, STEVE HAVARD, Individually and as Agent for Louisville & Nashville Railroad Company, and W. J. McRANEY, Station Agent for Louisville & Nashville Railroad Company, Defendants.

**MOTION TO QUASH PROCESS AND
ATTEMPTED ATTACHMENT AND DISMISS BILL
FOR WANT OF JURISDICTION**

Now come the Louisville & Nashville Railroad Company, Steve Havard and W. J. McRaney, acting by and through their attorneys, and make a special appearance, solely for the purpose of this motion and limited thereto, and move this Honorable Court to

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Quash Process in this attempted attachment proceeding and dismiss the Bill for want of jurisdiction, and in support thereof would show unto the Court as follows, to-wit:

I.

That the Defendant, Louisville & Nashville Railroad Company owns and maintains property in Jackson County, Mississippi, valued in excess of the amount sued for in the Bill of Complaint.

II.

That the Defendant, Louisville & Nashville Railroad Company, is qualified to do business in the State of Mississippi and has a registered agent for service of process in the State of Mississippi, as well as a local agent in charge of the Pascagoula, Mississippi office, either of whom may receive process which would lead to a valid *in personam* judgment against the Defendant if a judgment were obtained.

III.

That the Defendant, the Louisville & Nashville Railroad Company, is not an absent or absconding debtor, nor are the other defendants, nor are they alleged to be; the only allegation being that the defendant is a non-resident but, as stated in Paragraph II above, the Louisville & Nashville Railroad Company has

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become domesticated, and the other individual defendants can be served in the Circuit Court under proper statutes of the State of Mississippi.

IV.

That the Defendants are entitled to a jury trial on a personal injury claim in tort for unliquidated damages, and the procedure sought by the Complainant would deny such jury trial.

V.

That only the Louisville and Nashville Railroad Company and two of its employees are defendants in this suit, and no other person or party who holds property or assets or owes a debt to any of the defendants is named a party to this suit.

VI.

That the Chancery Court lacks jurisdiction in this matter for the foregoing reasons.

Respectfully submitted,

LOUISVILLE & NASHVILLE
RAILROAD COMPANY,
STEVE HAVARD and W. J.
McRANEY

BY: MEGEHEE, BROWN,
WILLIAMS & CORLEW

/s/ RAYMOND L. BROWN
RAYMOND L. BROWN

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MEGEHEE, BROWN, WILLIAMS & CORLEW
Post Office Box 787
Pascagoula, Mississippi 39567
Phone: (601) 762-2271

STATE OF MISSISSIPPI
COUNTY OF JACKSON

Personally appeared before me, the undersigned authority in and for said county and state, RAYMOND L. BROWN, who stated to me on oath that he is Attorney of Record for the Defendants, Louisville & Nashville Railroad Company, Steve Havard and W. J. McRaney, that he is informed and believes that the matters and things alleged in this motion are true and correct as therein stated.

/s/ RAYMOND L. BROWN
RAYMOND L. BROWN

Sworn to and subscribed before me, this the 24th day of July, 1974.

/s/ SAMMY M. BERNARD
NOTARY PUBLIC

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CERTIFICATE

I, RAYMOND L. BROWN, Attorney of Record for the Defendants in the foregoing cause of action, do hereby certify that I have this date mailed by U. S. Mail, postage prepaid, a true and correct copy of the foregoing Motion to the Attorney of Record for the Plaintiff, John Hunter, Esquire, at his regular post office address, which is Post Office Box 1287, Pascagoula, Mississippi 39567.

This the 24th day of July, 1974.

/s/ RAYMOND L. BROWN
RAYMOND L. BROWN

STIPULATION

(Number and Title Omitted)

It is hereby agreed by and between counsel that the Motion to Quash Process and Attempted Attachment and Dismiss Bill for Want of Jurisdiction may be ruled upon by the Court upon stipulated facts hereby submitted and approved by counsel for Complainant.

That the parties stipulate the following facts, to-wit:

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I.

That the Defendant, the Louisville & Nashville Railroad Company, owns more than 24 miles of right-of-way and more than 29 miles of track in Jackson County, Mississippi.

II.

That the Defendant, the Louisville & Nashville Railroad Company, owns real property other than that within its right-of-way and owns numerous items of personal property in Jackson County, Mississippi.

III.

That the foregoing property is of a value in excess of the damages claimed in this suit.

IV.

That the Louisville and Nashville Railroad Company is a foreign corporation qualified to do business in the State of Mississippi, with a registered agent for process appointed and with a local agent in charge of the Pascagoula, Jackson County, Mississippi, depot.

Respectfully submitted,

LOUISVILLE & NASHVILLE
RAILROAD COMPANY,
STEVE HAVARD and
W. J. McRANEY
BY: MEGEHEE, BROWN,
WILLIAMS & CORLEW
/s/ RAYMOND L. BROWN

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MEGEHEE, BROWN, WILLIAMS & CORLEW
Post Office Box 787
Pascagoula, Mississippi 39567
Phone: (601) 762-2271

AGREED STIPULATION:

/s/ JOHN L. HUNTER
John Hunter,
Attorney for Plaintiff

MOTION TO DISMISS

(Number and Title Omitted)

Filed: Jul. 31, 1974

Now come the Defendants, LOUISVILLE & NASHVILLE RAILROAD, STEVE HAVARD and W. J. McRANEY, and move this Court for dismissal of the above styled and numbered cause for the following reasons, to-wit:

That to proceed with this matter in Chancery Court of Jackson County, Mississippi, when all of these Defendants are properly subject to process in the Circuit Court of Jackson County, Mississippi, would be a denial of the right of trial by jury in violation of Amendment VII of the Constitution of the United States and

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in violation of Amendments V and XIV of the Constitution of the United States.

That to proceed with this matter in Chancery Court of Jackson County, Mississippi, when all of these Defendants are properly subject to process in the Circuit Court of Jackson County, Mississippi, would be a denial of the right of trial by jury in violation of Article 3, Section 31 of the Constitution of the State of Mississippi and Article 3, Section 14 of the Constitution of the State of Mississippi.

Respectfully submitted,

LOUISVILLE & NASHVILLE
RAILROAD COMPANY,
STEVE HAVARD and W. J.
McRANEY

BY: MEGEHEE, BROWN,
WILLIAMS & CORLEW
/s/ RAYMOND L. BROWN
RAYMOND L. BROWN

STATE OF MISSISSIPPI
COUNTY OF JACKSON

Personally appeared before me, the undersigned authority in and for said county and state, RAYMOND L. BROWN, who stated to me on oath that he is Attorney of Record for the Defendants, Louisville & Nashville Railroad Company, Steve Havard and W. J. McRaney, that he is informed and believes that the

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matters and things alleged in this motion are true and correct as therein stated.

/s/ RAYMOND L. BROWN
RAYMOND L. BROWN

Sworn to and subscribed before me, this the 31st day of July, 1974.

/s/ MARILYN B. GUARDIA
NOTARY PUBLIC

RAYMOND L. BROWN
MEGEHEE, BROWN, WILLIAMS & CORLEW
Post Office Box 787
Pascagoula, Mississippi 39567

CERTIFICATE

I, RAYMOND L. BROWN, Attorney of Record for the Defendants in the foregoing cause of action, do hereby certify that I have this date personally delivered a true and correct copy of the foregoing Motion to the Attorney of Record for the Plaintiff, John Hunter, Esquire, at his offices at 707 Watts Avenue, Pascagoula, Mississippi 39567.

This the 31st day of July, 1974.

/s/ RAYMOND L. BROWN
RAYMOND L. BROWN

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ANSWER TO BILL OF ATTACHMENT

(Number and Title Omitted)

Filed: Jul. 31, 1974

TO THE HONORABLE CHANCERY COURT OF
JACKSON COUNTY, MISSISSIPPI:

Now come the Defendant, the Louisville & Nashville Railroad Company, Steve Havard, and W. J. McRaney, and in answer to the bill of attachment filed against them in this cause, would state and show unto the Court as follows, to-wit:

1.

Defendants admit the allegations of paragraph 1.

2.

Defendants admit the allegations of paragraph 2, and, further answering, say that the Defendant, Louisville & Nashville Railroad Company, is qualified to do business in the State of Mississippi and is in fact doing business in the State of Mississippi.

3.

Defendants admit that the Defendant, Louisville & Nashville Railroad Company, owns the property described in paragraph 3, but denies that the property described, or any of same, is under the care, custody

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and control of W. J. McRaney, the said W. J. McRaney being an employee of the Louisville & Nashville Railroad Company, and said property being in the custody of the Louisville & Nashville Railroad Company, the said W. J. McRaney having no authority whatsoever to sell, lease, dispose of, or in any way deal with said property, except, as is the case with all employees, to protect railroad property from loss or damage.

4.

Defendants admit the allegations of ownership in paragraph 4, admit that the property of the railroad is subject to attachment in order to satisfy a valid judgment rendered against any or all of the Defendants, but denies that this Court, under the circumstances of this case, has jurisdiction to attach any of these Defendants, or their property, for purposes of acquiring jurisdiction herein.

5.

The Defendants admit the allegations as to the date and place of the accident complained of, but would deny the other allegations of paragraph 5.

6.

Defendants deny the allegations of paragraph 6, and more specifically denying that said crossing was hazardous and dangerous and that the Defendant or its operators were required to approach said crossing with the exercise of extreme caution and care.

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7.

Defendants deny the allegations of paragraph 7.

8.

Defendants deny the allegations of paragraph 8.

9.

Defendants deny the allegations of paragraph 9.

10.

Defendants deny the allegations of paragraph 10.

11.

Defendants deny the allegations of negligence in paragraph 11, and, as to the injuries, these Defendants are without knowledge or information upon which to base an admission or denial of the various allegations, and, therefore, deny same and demand strict proof thereof.

12.

Defendants deny the allegations of paragraph 12.

13.

Defendants deny that an attachment of the property of any of these Defendants will lie in this cause and deny that writs of garnishment and attachment should issue herein; Defendants deny that judgment should be granted against any of these Defendants in any amount

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whatsoever, and deny that the Plaintiff is entitled to any relief whatsoever from these Defendants in this cause.

AFFIRMATIVE DEFENSES

I.

And now, having fully answered the Bill of Attachment filed against them in this cause, the Defendants give notice that they intend to prove that the sole, proximate cause of the accident and injuries complained of was the negligence of the driver of the vehicle in which the Plaintiff, Rheetta Hasty, was riding as a passenger.

II.

That said negligence consisted of the following acts or omissions, to-wit:

- A. Failure to stop, look and listen before proceeding upon the tracks as required by law.
- B. Failure to keep a reasonable and proper lookout.
- C. Failure to heed and obey a city stop sign at or near the crossing.
- D. Failure to heed or obey a railroad stop sign at or near the crossing.
- E. Failure to heed warnings emitted by the train.

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F. Failure to exercise reasonable care and caution.

And now, having fully answered the Bill of Attachment filed herein, and having set forth Affirmative Defenses, the Defendants move to be dismissed with their reasonable costs expended.

Respectfully submitted,
LOUISVILLE & NASHVILLE
RAILROAD COMPANY,
STEVE HAVARD and W. J.
McRANEY
BY: MEGEHEE, BROWN,
WILLIAMS & CORLEW
/s/ RAYMOND L. BROWN
RAYMOND L. BROWN

STATE OF MISSISSIPPI
COUNTY OF JACKSON

Personally appeared before me, the undersigned authority in and for said county and state, RAYMOND L. BROWN, who stated to me on oath that he is Attorney of Record for the Defendants, Louisville & Nashville Railroad Company, Steve Havard and W. J. McRaney, and that he signed the above and foregoing Answer for and on behalf of said Defendants as their attorney, and that said Answer and the allegations contained therein are true and correct as therein stated ac-

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cording to information and belief of the said Raymond L. Brown.

/s/ RAYMOND L. BROWN
RAYMOND L. BROWN

Sworn to and subscribed before me this the 31st day of July, 1974.

/s/ MARILYN B. GUARDIA
NOTARY PUBLIC

RAYMOND L. BROWN
MEGEHEE, BROWN, WILLIAMS & CORLEW
Post Office Box 787
Pascagoula, Mississippi 39567

CERTIFICATE

I, RAYMOND L. BROWN, Attorney of Record for the Defendants in the foregoing cause of action, do hereby certify that I have this date personally delivered a true and correct copy of the foregoing Answer to the Attorney of Record for the Plaintiff, John Hunter, Esquire, at his offices at 707 Watts Avenue, Pascagoula, Mississippi 39567.

This the 31st day of July, 1974.

/s/ RAYMOND L. BROWN
RAYMOND L. BROWN

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ORDER

(Number and Title Omitted)

Filed: Aug. 6, 1974

There coming on to be heard this day the motion of the Defendants, the Louisville and Nashville Railroad Company, Steve Havard and W. J. McRaney, for dismissal on the ground that a trial in Chancery Court without jury by way of attachment in this cause is in violation of Amendments V and XIV and Amendment VII of the United States Constitution and Article 3, Section 31 and Article 3, Section 14 of the Constitution of the State of Mississippi and the Court, being fully advised in the premises, finds that the motion should be, and is hereby overruled.

ORDERED this the 6th day of August, 1974.

/s/ KENNETH B. ROBERTSON
CHANCELLOR

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**MOTION FOR RE-HEARING
OR NEW TRIAL**

(Number and Title Omitted)

Filed: Feb. 23, 1976

NOW COME the Defendants, the LOUISVILLE & NASHVILLE RAILROAD COMPANY and STEVE HAVARD, acting by and through their attorneys, and move this Honorable Court for re-hearing or a new trial, and in support thereof would show unto the Court as follows, to-wit:

I.

That the Court erred in overruling Motion of Defendants for dismissal for lack of jurisdiction in the Chancery Court.

II.

That the Court erred in overruling Motion for dismissal based on lack of the necessary grounds for an attachment in Chancery.

III.

That the Court erred in overruling Motion for dismissal on the grounds that the Plaintiff has an adequate remedy at law.

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IV.

That the Court erred in overruling Motion of Defendants for a Jury trial in Chancery, after the Court had ruled that it would take jurisdiction of the matter in Chancery Court.

V.

That in denying the Defendants their right to be sued in the Circuit Court and in denying Jury trial, the Court was in error and violated the right of these Defendants under Amendment VII of the Constitution of the United States and Amendment V and Amendment XIV of the Constitution of the United States; that such denial also violated the rights of these Defendants under Article III, Section 31 of the Constitution of the State of Mississippi and Article III, Section 14 of the Constitution of the State of Mississippi.

VI.

That the Opinion of the Court and the Decree of Judgment based thereon are contrary to the overwhelming weight of the evidence.

VII.

That the amount of the Judgment is excessive and cannot be cured by remittitur, but these Defendants contend that if rehearing or new trial is not granted, a remittitur should be granted.

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VIII.

That in arguments on the Motions made in this cause, the Court and counsel discussed and argued at length the issue of whether the Chancery Court has jurisdiction of this matter, in any event, because it involves a claim of a minor, and the Chancery Court, by statute, has jurisdiction in matters involving minors. It is assumed, therefore, that part, if not all, of the basis for the ruling by the Court taking jurisdiction of this matter is based upon the fact that it is a minor's claim, and, therefore, the Defendants contend that it was error for the Court to take jurisdiction of this cause on said basis.

Respectfully submitted,

LOUISVILLE & NASHVILLE
RAILROAD COMPANY and
STEVE HAVARD
BY: MEGEHEE, BROWN &
WILLIAMS
/s/ Raymond L. Brown
RAYMOND L. BROWN

CERTIFICATE

I, RAYMOND L. BROWN, attorney of record for the Defendants, Louisville & Nashville Railroad Company and Steve Havard, do hereby certify that I have this day mailed by United States Mail, postage prepaid, a true and correct copy of the foregoing Motion for Re-hearing or New Trial to John L. Hunter, attorney of record for the Complainant, at his usual business address of Post Office Box 1287, Pascagoula, Mississippi 39567.

THIS, the 23rd day of February, 1976.

/s/ Raymond L. Brown
RAYMOND L. BROWN